

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish a recurrence of disability commencing May 29, 2015 due to the accepted December 10, 2014 employment injury.

## **FACTUAL HISTORY**

On December 10, 2014 appellant, then a 42-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she sprained her ankle when a mail container pushed onto her ankle. She stopped work on December 10, 2014. On January 16, 2015 OWCP accepted her claim for sprain and contusion of the left ankle. Appellant received compensation benefits on the supplemental rolls from January 25 until May 15, 2015.

In a report of work restrictions (Form OWCP 5-c) dated April 27, 2015, Dr. Gus Katsigiorgis, a Board-certified orthopedic surgeon, stated that appellant could return to work for eight hours per day with restrictions of walking no more than five hours, standing no more than six hours, and pushing/pulling no more than 15 pounds.

On May 20, 2015 appellant accepted a limited-duty, full-time job offer with the employing establishment. Among other requirements, the job offer contained a physical requirement of pushing and pulling containers weighing up to 10 pounds.

In a note dated May 26, 2015, Dr. Katsigiorgis related that appellant was totally disabled. In an accompanying medical report of the same date, he noted that her left ankle had tenderness and restricted range of motion. Dr. Katsigiorgis also related that appellant reported sensations of numbness, tingling, and burning along the lateral border of the foot. He recommended "light duties at work."

Appellant submitted an undated note from Dr. Katsigiorgis regarding work restrictions, which was received on June 11, 2015. This note contained a recommendation that appellant sit or stand no more than six hours per day, walk only five hours per day, and push/pull no more than 15 pounds.<sup>3</sup>

On May 29, 2015 appellant began working only six hours per day.

In a report dated June 9, 2015, Dr. Katsigiorgis reiterated that appellant could perform light duties at work.

On July 13, 2015 appellant claimed a recurrence of disability (Form CA-2a) beginning December 10, 2014. She noted that the recurrence was for "medical treatment only."

By letter dated August 13, 2015, OWCP informed appellant that her claim was already open for medical treatment, so there was no need to file a recurrence for medical treatment only.

---

<sup>3</sup> Although this report does not bear the full name of the physician, the signature is identical to that of Dr. Katsigiorgis on a previous April 27, 2015 report.

It noted, however, that the decrease in her work hours suggested that she was claiming disability due to a material change/worsening of her accepted conditions. OWCP found that there was no medical evidence explaining why appellant could not work eight hours per day in her light-duty position. It noted that the medical note regarding restrictions of sitting no more than six hours could not be verified as having come from her physician.

By letter dated August 17, 2015, OWCP referred appellant for a second opinion evaluation with Dr. Leon Sultan, a Board-certified orthopedic surgeon, regarding the extent and nature of her disability. The appointment was scheduled for September 8, 2015.

By decision dated September 17, 2015, OWCP denied appellant's claim for recurrence of disability beginning May 29, 2015. It noted that appellant had not submitted medical evidence sufficient to support a work restriction of sitting no more than six hours per day.

On September 21, 2015 OWCP received a report dated September 8, 2015 from Dr. Sultan. Dr. Sultan related that he had examined appellant and found that her left ankle condition had resolved. He stated that she had no current disability related to the employment injury of December 10, 2014 and no unrelated medical conditions which would affect her ability to work. Dr. Sultan explained that appellant was capable of working eight hours per day at full duty.

On September 24, 2015 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

The hearing was held on June 16, 2016. At the hearing, appellant confirmed that she was seeking compensation for two hours of work on the days that she worked only six hours after May 29, 2015. She stated that her ankle began to throb after returning to work in May 2015.<sup>4</sup> Counsel disputed the characterization of medical evidence in OWCP's September 17, 2015 decision. Furthermore, he noted that because she had returned to work for only a short period of time before the alleged recurrence took place, she should not have to prove a recurrence in order to obtain disability benefits. Counsel noted that he would secure a medical report supporting appellant's claim. The hearing representative held the record open for 30 days for the submission of additional evidence.

By decision dated August 29, 2016, the hearing representative affirmed OWCP's decision of September 17, 2015. She noted that no further medical evidence was received subsequent to the hearing.

### **LEGAL PRECEDENT**

Under FECA,<sup>5</sup> the term disability is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>6</sup> Disability is not

---

<sup>4</sup> Appellant noted that she had returned to eight hours of work per day on October 14, 2015.

<sup>5</sup> *Supra* note 2.

<sup>6</sup> *See Prince E. Wallace*, 52 ECAB 357, 358 (2001).

synonymous with a physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA.<sup>7</sup>

OWCP's procedures recognize that, if an alleged recurrence occurs less than 90 days after a return to light or full duty, the claimant is not required to produce the same evidence as for a recurrence claimed long after apparent recovery and return to work. Therefore, in cases where recurring disability for work is claimed within 90 days or less from the first return to duty, the focus is on disability rather than causal relationship.<sup>8</sup> The attending physician should describe the duties which the employee cannot perform and the demonstrated objective medical findings that form the basis for the renewed disability.<sup>9</sup>

### ANALYSIS

OWCP accepted appellant's December 10, 2014 claim for sprain of the left ankle and a contusion of the left ankle. Appellant returned to light-duty work on May 18, 2015, but filed a claim for recurrence of disability on July 13, 2015. She later clarified that she claimed two hours of leave without pay for each shift after May 29, 2015, noting that she had been restricted from working more than six hours on those days by her physician.

The Board finds that appellant has failed to submit sufficient evidence to establish a recurrence of disability on May 29, 2015. The record does not contain sufficient medical evidence establishing, with objective evidence, that appellant was only able to perform her light-duty work for six hours a day commencing May 29, 2015.

Appellant submitted a note from Dr. Katsigiorgis received by OWCP on June 11, 2015. This note recommended that appellant sit or stand for no more than six hours per day, while walking only five hours per day, and push/pull no more than 15 pounds. This is the only evidence that supports appellant's contention that she could not work full time after May 29, 2015. As this report did not address the specific time period at issue or offer any explanation as to why appellant was only able to work six hours a day, based upon objective medical evidence, it is insufficient to establish appellant's burden of proof.<sup>10</sup>

Dr. Katsigiorgis, in multiple reports dated May 26, 2015, June 9, 2015, and other progress notes, found specifically that appellant could work eight hours per day. Further, the report of the second opinion physician, Dr. Sultan, found that appellant had no current disability related to the employment injury of December 10, 2014, as the accepted conditions had resolved, and no medical conditions affecting her ability to work unrelated to the employment injury of

---

<sup>7</sup> Cheryl L. Decavitch, 50 ECAB 397, 401 n.5 (1999); Maxine J. Sanders, 46 ECAB 835, 840 (1995).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(a) (June 2013). See *J.S.*, Docket No. 16-922 (issued September 22, 2016); *R.C.*, Docket No. 12-1879 (issued March 21, 2013).

<sup>9</sup> See *L.T.*, Docket No. 15-1922 (issued August 23, 2016).

<sup>10</sup> See *L.A.*, Docket No. 16-1420 (issued December 15, 2016).

December 10, 2014. He explained that appellant was capable of working eight hours per day at full duty. As appellant has failed to submit rationalized medical evidence sufficient to establish an inability to work more than six hours per day after May 29, 2015, the Board finds that she has not met her burden of proof to establish a recurrence of disability.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant failed to meet her burden of proof to establish a recurrence of disability commencing May 29, 2015 due to the accepted December 10, 2014 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 29, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 19, 2017  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board